throughout the Union, this decision will cost the federal farm credit system at least one-third of a million dollars annually, as we show below. We submit that the significance of this case to an important area of federal interest, the error in the decision of the court below and the necessity for a ruling on this point of uniform, nationwide applicability call for review by this Court.

1. As the court below recognized (App. B, *infra*, at pp. 28–29), the extent to which an instrumentality of the United States may be taxed by a State is a matter for Congress alone to determine. See, *e.g.*, *Federal Land Bank of Wichita* v. *Board of County Commissioners, supra*, 368 U.S. at 149; *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 233–234. In this instance, Congress has spoken clearly. By Section 63 of the Farm Credit Act of 1933, it has expressly exempted from state taxation[*] "[production credit] associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income." The decision of the court below, subjecting petitioner's franchise to state taxation, is in conflict with the congressional exemption and must, we submit, yield to the command of the Supremacy Clause, U.S. Constitution, Art. VI, para. 2.

The basis for the court's holding was that Congress had waived the immunity it had granted petitioner in Section 63, when it went on to provide that the exemption "shall not apply with respect to any production credit association or its property or income"

[*] Except for "any real property and any tangible personal property," see App. D, *infra*, at p. 31.

after the government's class A stock in the association has been retired (as it has been in petitioner's case). However, the "waiver" on which the court below relies is not coextensive with the statutory exemption. The waiver singles out only certain of the incidents specified in the exemption ("associations, their property, * * * and their income") and refrains from including those comprehended by the phrase, "their franchises, capital, reserves, surplus, and other funds."

The very face of the statute seems thus to negate any congressional waiver of immunity from franchise taxes. However, even if the statute were thought to be ambiguous on this point, the decision below could not be sustained. For it is settled that, before any effect will be given a putative waiver of the tax exemption of a federal instrumentality, "the waiver must be clear, and every well grounded doubt upon the subject should be resolved in favor of the exemption." *Austin* v. *The Aldermen*, 7 Wall. 694, 699; see also *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 122. Whatever else may be said for Section 63 of the Farm Credit Act, it certainly does not amount to a "clear congressional mandate" (*ibid.*) that the federal franchises of production credit associations should be exposed to taxation by the States.

Nor may it be supposed that Congress is incapable of speaking clearly to this point when it chooses to do so. The very same Congress that enacted the Farm Credit Act and its tax exemption provided, in Section 5 of the Home Owners Loan Act of 1933, 48 Stat. 133, 12 U.S.C. 1464(h), that while "[federal

savings and loan] associations, including their *franchises,* capital, reserves, and surplus, and their loans and income" are exempt from federal taxation, states and municipalities may impose nondiscriminatory taxes "on such associations or their *franchise,* capital, reserves, surplus, loans, or income" (emphasis supplied). In this, the only instance of which we know where Congress has consented to state taxation of the franchise of a federal instrumentality, the consent is "clear." In finding a conscious congressional consent equally clear with respect to production credit associations, the court below erred, and its decision should be reviewed here.

2. While the legislative history of the Farm Credit Act of 1933 sheds no clear light on the specific question presented,[7] it does provide ample basis for concluding that to subject the franchises of production credit associations to state taxation would be contrary to the intent of Congress. In the first place, to give the congressional "waiver" of exemption anything but a very narrow construction would undermine the salutary purposes of the legislation. Secondly, there is every reason to suppose that Congress purposefully withheld its consent to the taxation of the associations' franchises on the ground that that particular form of taxation would be inconsistent with the associations' federal character.

a. As this Court observed in *Federal Land Bank of Wichita* v. *Board of County Commissioners, supra,*

[7] The committee reports merely paraphrase the statutory language with respect to the tax exemption. H. Rep. No. 171, 73d Cong., 1st Sess., p. 6; S. Rep. No. 124, 73d Cong., 1st Sess. p. 6.

368 U.S. at 151, the purpose of the legislation establishing the federal farm credit system was to provide loans to farmers "at the lowest possible interest rates." The Farm Credit Act of 1933 was no exception. The Message from President Roosevelt that resulted in the passage of the Act (see 77 Cong. Rec. 4685) called for legislation "for the purpose of meeting the credit needs of agriculture at minimum cost" (Message of March 27, 1933). The sponsor of the bill, Representative Marvin Jones, in describing the conditions at which it was directed, said, "High interest rates have been the curse of agriculture," 77 Cong. Rec. 4687. To the same effect are the committee reports, H. Rep. No. 171, 73d Cong., 1st Sess., pp. 1–2; S. Rep. No. 124, 73d Cong., 1st Sess., pp. 1–2, and the debates, see, *e.g.*, 77 Cong. Rec. 4689, 4690, 4692, 4693, 4696, 4697.

Plainly enough, this purpose of securing production credit for the farmers "at the lowest possible interest rates" can be adequately served only by construing as liberally as possible the tax exemptions of the instrumentalities administering the system (and, of course, by construing any alleged "waiver" as narrowly as possible). These considerations lose none of their force when the operations of these instrumentalities no longer depend on the existence of government capital in them.[8] In no respect did

[8] It will be recalled that the Federal Land Banks, whose tax exemption was at issue in *Federal Land Bank of Wichita* v. *Board of County Commissioners*, *supra*, are wholly owned by federal land bank associations, which in turn are wholly owned by farmer-borrowers (see Brief for the Petitioner, No. 25, Oct. Term, 1961, pp. 15–16).

petitioner's operations change when, in 1953, it retired the last class A stock held by the government; it continues to function pursuant to the provisions of the Farm Credit Act and subject to detailed supervision by the Farm Credit Administration. Indeed, local ownership and operation was considered by Congress as but another of the means for increasing the efficiency and reducing the operating costs of the association, in order that they might best serve the purposes of the legislation. See, *e.g.*, 77 Cong. Rec. 4705. This conscientious effort on the part of Congress to secure farmer-borrowers the cheapest possible loans could be seriously weakened if the production credit associations' tax exemption is given anything but a generous construction. And such a construction, it would seem, must exclude the associations' franchises from state taxation.

b. As the Ohio Board of Tax Appeals found (App. A, *infra*, at pp. 23–25), there is apparent in the comprehensive statutory scheme for federal regulation of the production credit associations a purpose that they be subject only to *federal* managment and control, and it would be inconsistent with that purpose for an association to have to "make any adjustments in its organization or management or substitute any regulation demanded by Ohio statute for the authority given to the Governor under the federal act" (*id.* at p. 25). Accordingly, the Board concluded (*ibid.*) that Congress must not have intended the associations to be subject to state control to the extent implied by

the right to tax their federal franchises.[9] This conclusion quite reasonably attributes to Congress the view, long recognized by this Court, that to allow state taxation of federal franchises is, *pro tanto*, to concede some of the federal sovereignty inhering in them—indeed, "is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount sovereignty." *California* v. *Pacific Railroad Co.*, 127 U.S. 1, 41.

3. The question presented by this case has arisen in a number of other States, and its resolution has produced widely divergent results. The taxing authorities of seven States in addition to Ohio have asserted the power to tax the federal franchises of production credit associations after all government stock has been retired.[10] Those in eight other States have issued opinions to the effect that Section 63 does not permit them to apply their franchise taxes to such associations.[11] This disparity of treatment, of

[9] The Board found that the congressional consent to other state taxation "does not carry with it the right to control the operations of" petitioner (App. A, *infra*, at pp. 23–24). However, the Ohio franchise tax is subject to a comprehensive scheme of auxiliary provisions that could, if enforced, seriously impede the operations of a corporation. See note 4, *supra*.

[10] California, Michigan, Minnesota, Montana, Oklahoma, Utah and Washington. In addition, associations in Connecticut and Vermont voluntarily pay a franchise tax measured by net income. See Appendix E, *infra*, at p. 37.

[11] Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and South Carolina. Notwithstanding the ruling of the Attorney General of Georgia, the city of Athens, Georgia, requires the payment of a city license tax. See Appendix E, *infra*, at p. 37.

course, leaves the question largely open in the many other States having franchise taxes and in which production credit associations operate. The several associations should not, we submit, be subject to such conflicting interpretations of an important provision of the federal Act under which they operate. They are entitled to a uniformly applicable ruling as to their amenability, under Section 63 of the Act, to state franchise taxes. The matter should be finally resolved in this case by this Court.

4. This case is of considerable financial importance to the federal farm credit system. At present, 373 of the 487 production credit associations[12] operate in the 31 States imposing franchise taxes.[13] If all of these States should apply their franchise taxes to the associations within their borders, it is estimated that the total annual tax burden would amount to some $377,000.[14] To say that this would be a considerable burden upon the local associations and upon the farmer-borrowers who own them would be to state the obvious. And it would necessarily be, to some extent at least, at the expense of the federal farm credit system as a whole and of the important purpose it serves—to bring the farmers of the Nation credit for agricultural purposes at the lowest possible cost.

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[12] The Governor of the Farm Credit Administration still holds class A stock in 8 of these 373 associations, thus removing their franchises from any immediate threat of state taxation.

[13] See Appendix E, *infra*, at p. 36.

[14] Estimate furnished by Farm Credit Administration. See Appendix E, *infra*, at p. 36.

CONCLUSION

In view of the importance of this case to the federal farm credit system, of the error in the decision of the Supreme Court of the State of Ohio, and of the need for a generally applicable ruling as to the tax status of production credit associations, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Federal Intermediate Credit Bank of Louisville.

JULY 1962.

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APPENDIX A

Before the Board of Tax Appeals, Department of Taxation, State of Ohio

Case No. 43890
(Franchise Tax)

COLUMBUS PRODUCTION CREDIT ASSOCIATION, COLUMBUS, OHIO, APPELLANT

v.

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO, APPELLEE

[Entry: April 11, 1961]

Appearances

For the Appellant: W. S. Pealer & William J. Lohr, 50 West Broad Street, Columbus 15, Ohio.

For the Appellee: Mark McElroy, Ohio Attorney General, and Joseph D. Karam, Assistant, State House, Columbus 15, Ohio.

This cause came on to be considered by the Board of Tax Appeals upon notice of appeal filed herein on November 23, 1960, by the above appellant from a final order of the Tax Commissioner, dated July 27, 1960, in and by which final order the Tax Commissioner on consideration of an application for review and reconsideration affirmed a corporation franchise tax arrearage against the appellant for the years 1953, 1954, 1955, 1956, 1957, 1958 and 1959.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript furnished by the Tax Commissioner, a

stipulation of facts by the parties agreed upon at the time of the hearing of the matter at Columbus, Ohio, October 27, 1960, and the briefs of counsel.

The appellant is an association formed under the Farm Credit Act of 1933 for the purpose of making short term loans to farmers, without regard to the credit of the borrower at the time, for agricultural purposes, provided that the borrowers could qualify by purchasing stock in the association as set forth in the law.

The appellant association was organized and chartered under an Act of Congress, and Section 20 (12 U.S.C. 1131d) of that Act reads in part as follows:

> The governor is authorized and directed to organize and charter corporations to be known as "Production Credit Associations."
>
> The governor shall have power, under rules and regulations prescribed by him, or by prescribing the terms of the charter of the association, or both, to provide for the organization, management, and conduct of the business of the association; and the power of the governor shall extend to prescribing the amount of the stock of such association; fixing the territory within which its operations may be carried on; fixing the method of election and appointment of, and the amount and payment of the compensation of, directors, officers, and employees; fixing the maximum amount of individual loans which may be made; prescribing the conditions under which the stock may be retired; and providing for the consolidation of two or more such associations.

The "governor" referred to is the governor of the Farm Credit Administration authorized by the Farm Credit Act of 1933.

Section 63 (12 U.S.C. 1138c) of the Act reads as follows:

> The Central Bank for Cooperatives, and Production Credit Associations, and Banks for Cooperatives, organized under this chapter, and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by such banks, or associations shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority. Such banks, and associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such banks and associations, shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. The exemption provided herein shall not apply with respect to any production credit association or its property or income after the class A stock held in it by the Governor has been retired, or with respect to any bank for cooperatives or its property or income after the stock held in it by the United States has been retired.

The Tax Commissioner sets forth in his final order of July 27, 1960, that Section 5733.01, Revised Code, is the authority for the franchise tax arrearage certifications for the years 1953 through 1959, inclusive, in the amount of $6,947.25, plus a 15% penalty amounting to $1,042.09 and totaling $7,989.34.

The stipulation of facts is as follows:

(1) that Columbus Production Credit Association was incorporated January 26, 1934, pursuant to Title II of the Farm Credit Act of 1933 and a copy of the Articles of Incorporation are attached to this stipulation;

(2) that on January 31, 1934, the Governor of the Farm Credit Administration, by certificate, fixed the territory within which the Columbus Production Credit Association may operate, a copy of which certificate is attached to the stipulation;

(3) that since 1953, all of the shares of Class A stock held in the Columbus Production Credit Association by the Governor have been retired; that since 1953 neither the Federal Government nor any of its officials have held shares of any class whatsoever in said association; that the total shareholder interest in said association since 1953 has been in the hands of parties other than the Federal Government or its officials.

The Tax Commissioner contends that beginning in 1953, the appellant was no longer exempt from paying the tax referred to as the "franchise tax" under Section 5733.01, Revised Code, for the reason that the Governor had retired all Class A stock in the appellant association and that the appellant association should from that point be considered as a foreign corporation for profit.

It is the position of the appellant that the association was incorporated pursuant to an Act of Congress and continued to be an instrumentality of the United States since the beginning of 1953 and that, as such, the State of Ohio is without authority to levy the tax authorized by Section 5733.01, Revised Code, and that the exemption from such a tax continues after the Governor has retired all of the Class A stock in the association.

It is not seriously contended that the association is not an instrumentality of the United States. Therefore, this matter must be decided upon the interpretation of Section 63 (12 U.S.C. 1138c) of the Farm Credit Act of 1933 and the application of Section 5733.01, Revised Code.

Fee charged against domestic and foreign corporations

The tax provided by sections 5727.39 to 5727.62, inclusive, and 5733.01 to 5733.27, inclusive, of the Revised Code, for domestic corporations shall be the fee charged against each corporation organized for profit under the laws of this state and each corporation not for profit organized pursuant to sections 1729.01 to 1729.28, inclusive, of the Revised Code, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of exercising its franchise during the calendar year in which such fee is payable, and the tax provided by sections 5727.39 to 5727.62, inclusive, and 5733.01 to 5733.27, inclusive, of the Revised Code, for foreign corporations shall be the fee charged against each corporation organized for profit and each corporation not for profit organized or operating in the same or similar manner as corporations not for profit organized under sections 1729.01 to 1729.28, inclusive, of the Revised Code, under the laws of any state or country other than Ohio, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of doing business in this state, owning or using a part or all of its capital or property in this state, or holding a certificate of compliance with the laws of this state authorizing it to do business in this state during the calendar year in which such fee is payable.

Section 5733.01, Revised Code, authorizes a tax or fee for the privilege of doing business in this state, owning or using a part or all of its capital or prop-

erty in this state, and is applied to a foreign corporation for the privilege of doing business in this state and for the privilege of owning a part or all of the foreign corporation's capital or property in this state. The tax is, in fact, a franchise tax or license fee. It is not a tax upon commerce, state or interstate, or upon income receipts or sales or upon property. Aluminum Co. v. Evatt, 140 Ohio St., 385.

The appellant association, being an instrumentality of the United States, is subject to state taxation only as Congress permits, both as to the extent and in the manner authorized. The Congress by statute consenting to taxation by a state confers a mere privilege for which nothing is given by the state or received by the United States and is simply a waiver of immunity.

An examination of Section 63 of the Act of Congress (12 U.S.C. 1138c) clearly discloses that a production credit association at the time of organization be immune from all taxation excepting certain federal taxes and federal, state, territorial and local taxation on any real property and any tangible personal property of such association to the same extent as other similar property is taxed.

The last sentence of the foregoing section provides:

> The exemption provided herein shall not apply with respect to any production credit association or its property or income after the Class A stock held in it by the Governor has been retired, * * *.

An analysis of the foregoing language which presents the situation subsequent to the retirement of the Class A stock held by the Governor is not a waiver of immunity or a consent given to the state to tax the appellant for the privilege of engaging in business under the provisions of Section 5733.01, Revised Code.

The waiver of immunity as to taxation of *property* and *income* of a federal instrumentality cannot be construed as a grant of power to a state the right to tax the privilege of said instrumentality to engage in business. *Austin* v. *Aldermen of Boston*, S.C., 7 Wall., 694, 19 L.E. 224, wherein Mr. Justice Swayne uses this language:

> * * * It is well settled that the States cannot exercise this authority in respect to any of the instrumentalities which the General Government may create for the performance of its constitutional functions. It is equally well settled, that this exemption may be waived wholly, or with such limitations and qualifications as may be deemed proper, by the law making power of the nation; but the waiver must be clear, and every well grounded doubt upon the subject should be resolved in favor of the exemption. * * *

Bearing in mind that the consent to tax real and tangible personal property to the same extent as other similar property is taxed existed prior to the retirement of the Class A stock held by the Governor, the waiver of immunity and consent to taxation after that time applies to any other property, whether tangible or intangible, of the association or its income, but there is no clear waiver of immunity in positive language directly upon the subject as required by law or a consent given to tax the right to do business within a state or the right to own property within a state.

The intention of Section 63 of the Farm Credit Act (12 U.S.C. 1138c) obviously is to completely control the subject with which it deals and to furnish the exclusive rule governing the extent and manner of state taxation. The consent to taxation appearing

therein does not carry with it the right to control the operations of the appellant.

Section 20 of the Farm Credit Act (12 U.S.C. 1131d) sets forth in detail the source of authority for the organization, management, and conduct of the business of the association, including the fixing of the territory within which its operations may be carried on, the method of election and appointment and compensation for directors, officers and employees and fixing the maximum amount of individual loans which may be made, prescribing the conditions under which stock may be retired and providing for the consolidation of two or more such associations. In none of these functions is the participation of the State of Ohio anticipated.

Further evidence that it was the intention of Congress to cause the operation of the production credit associations to be continuing as an instrumentality of the United States is the fact that the Governor is given authority to retire, purchase and cancel Class A stock at any time that in his judgment such action is called for.

Section 20 of the Farm Credit Act (12 U.S.C. 1131d) in part is as follows:

> The Governor may purchase Class A stock of any production credit association in such amounts as he determines are required to meet the credit needs of farmers in the area served by such association * * * The Governor may at any time require any production credit association to retire and cancel any Class A stock held by him in such association if, in his judgment, the association has resources available therefor * * *

Under Section 1701.01, Revised Code, to "retire" a share means to restore it to the status of an authorized but unissued share. The Governor, therefore,

has the authority to purchase shares of Class A stock when necessary, to retire shares of Class A stock when advisable, but retaining such retired shares for later issuance, and to cancel retired shares, if indicated.

The exemption set forth in Section 63 of the Farm Credit Act (12 U.S.C. 1138c) takes effect only when Class A stock, held by the Governor, has been retired. It is inconceivable that the Congress intended to permit any control over the operation of the associations that would be incurred by the application of Section 5733.01, Revised Code, and the regulatory sections included therein.

The statutes regarding the production credit associations as set up under the Farm Credit Act of 1933 do not anticipate that the management or control at any time be within the law or regulation of a state, and no provision is made therefor. It follows that a tax upon the right to do business and the right to own property in the State of Ohio is not included in the exemption provided which permits taxation of the property and income of the appellant after the Class A stock held by it by the Governor was retired prior to 1953. There is no provision in any of the federal sections that consents to the proposition that the association, which is deemed in the first instance to be an instrumentality of the United States, make any adjustments in its organization or management or substitute any regulation demanded by Ohio statute for the authority given to the Governor under the federal act.

It is the finding of the Board of Tax Appeals that subsequent to the year 1953 the appellant association has remained an instrumentality of the federal government and that Congress has given no authority to the State of Ohio to impose upon the appellant the

tax set forth in Section 5733.01, Revised Code, and that the final order of the Tax Commissioner dated July 27, 1960, should be, and the same is, reversed.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the Department of Taxation this day taken with respect to the above matter.

(S). RONALD R. CALHOUN,
Secretary.

APPENDIX B

COLUMBUS PRODUCTION CREDIT ASSN., APPELLEE, v. BOWERS, TAX COMMR., APPELLANT.

Taxation—Franchise tax—Section 5733.01, Revised Code—Production credit association subject to tax, when—Shareholder interest having passed to others than the federal government or officials

A production credit association is subject to the Ohio franchise tax imposed by Section 5733.01, Revised Code, after the shareholder interest in the association has passed to parties other than the federal government or any of its officials

(No. 37074—Decided February 7, 1962.)

APPEAL from the Board of Tax Appeals.

The Columbus Production Credit Association is a corporation which was organized on January 26, 1934, pursuant to Title II of the Farm Credit Act of 1933, for the purpose of making short and intermediate term loans to farmers for general agricultural purposes.

The Governor of the Farm Credit Administration chartered this corporation, which was organized by farmers, and directed it to conduct operations in a district composed of central Ohio counties designated by him.

The class B stock, which is the only voting stock in this corporation, is owned only by farmer-borrowers. The class A stock is owned by investors and by the governor on behalf of the United States.

Since 1933 all the shares of class A stock held in the association by the governor have been retired, and since 1953 the total shareholder interest in the association has been in the hands of others than the federal government or any of its officials.

The Tax Commissioner made a finding of Ohio franchise tax arrearage certifications against the association for the years 1953, 1954, 1955, 1956, 1957, 1958 and 1959, in a total amount of $6,947.25, plus a 15 per cent penalty, on the grounds that the association was a foreign corporation and that its exemption from taxation had terminated.

On appeal by the association, the Board of Tax Appeals reversed the order of the Tax Commissioner.

This cause is before this court on appeal by the Tax Commissioner.

Mr. W. S. Pealer and *Mr. William J. Lohr*, for appellee.

Mr. Mark McElroy, attorney general, and *Mr. John J. Dilenschneider*, for appellant.

O'NEILL, J. The question before this court is whether a production credit association is subject to the Ohio franchise tax imposed by Section 5733.01, Revised Code, after the shareholder interest in the association has passed to parties other than the federal government or any of its officials.

The association here is an instrumentality of the United States. It has inherent as well as specific statutory exemption from a state franchise tax. See Section 1138c, Title 12, U.S. Code (Farm Credit Act of 1933).

An instrumentality of the United States may not be taxed by a state unless Congress has granted consent to the state to tax. *McCulloch* v. *Maryland*, 4 Wheat. (U.S., 1819), 316, 4 L. Ed., 579; *Austin* v. *Aldermen* (U.S., 1869), 7 Wall., 694, 19 L. Ed., 224; *California*

v. *Central Pacific Rd. Co.* (1888), 127 U.S., 1, 32 L. Ed., 150, 8 S. Ct., 1073.

The Congress of the United States has granted consent to the state of Ohio to impose upon the Columbus Production Credit Association the tax authorized by Section 5733.01, Revised Code, by the language in Section 1138c, Title 12, U.S. Code (Farm Credit Act of 1933). The latter section first sets forth in statutory language the exemptions from taxation which are to be enjoyed by production credit associations, and then it sets forth in clear language under what conditions Congress consents to state taxation of such associations. This language is broad and plain, is not ambiguous, and is as follows:

"The exemption provided herein shall not apply with respect to any production credit association or its property or income after the class A stock held in it by the governor has been retired."

Decision reversed.

ZIMMERMAN, TAFT, MATTHIAS and BELL, JJ., concur. HERBERT, J., not participating.

APPENDIX C

JUDGMENT OF THE SUPREME COURT OF THE STATE OF OHIO

COLUMBUS PRODUCTION CREDIT ASSN., APPELLEE, *v.* BOWERS, TAX COMMR., APPELLANT.

JOURNAL 44, PAGE 557

APPEAL FROM THE BOARD OF TAX APPEALS

This cause, here on appeal from the Board of Tax Appeals, was heard in the manner prescribed by law. On consideration thereof, the decision of the Board of Tax Appeals is reversed for the reasons stated in the opinion herein.

It is ordered that a certified copy of the entry issue to the Board of Tax Appeals to carry this judgment into execution.

APPENDIX D

Farm Credit Act of 1933, 48 Stat. 257, as amended, Section 63, 12 U.S.C. 1138c, provides:

> The Central Bank for Cooperatives, and Production Credit Associations, and Banks for Cooperatives, organized under this Act, and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by such banks, or associations shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority. Such banks, and associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such banks, and associations, shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. The exemption provided herein shall not apply with respect to any production credit association or its property or income after the class A stock held in it by the Governor has been retired, or with respect to any bank for cooperatives or its property or income after the stock held in it by the United States has been retired.

The Ohio Revised Code (Page's Ann. ed., Supp. 1961) provides:

§ 5733.01 *Fee charged against domestic and foreign corporations.*

The tax provided by sections 5727.39 to 5727.62, inclusive, and 5733.01 to 5733.27, inclusive, of the Revised Code, for domestic corporations shall be the fee charged against each corporation organized for profit under the laws of this state and each corporation not for profit organized pursuant to sections 1729.01 to 1729.28, inclusive, of the Revised Code, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of exercising its franchise during the calendar year in which such fee is payable, and the tax provided by sections 5727.39 to 5727.62, inclusive, and 5733.01 to 5733.27, inclusive, of the Revised Code, for foreign corporations shall be the fee charged against each corporation organized for profit and each corporation not for profit organized or operating in the same or similar manner as corporations not for profit organized under sections 1729.01 to 1729.28, inclusive, of the Revised Code, under the laws of any state or country other than Ohio, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of doing business in this state, owning or using a part or all of its capital or property in this state, or holding a certificate of compliance with the laws of this state authorizing it to do business in this state during the calendar year in which such fee is payable.

* * * * * *

§ 5733.05 *Determination of the value of issued and outstanding stock and intangible property.*

After the filing of the annual corporation report, the tax commissioner, if he finds such report to be correct, shall on or before the first

Monday in May determine the value of the issued and outstanding shares of stock of every corporation required to file such report. Such determination shall be made as of the date shown by the report to have been the beginning of the then current annual accounting period of such corporation. For the purpose of this section, the value of the issued and outstanding shares of stock of any such corporation shall be deemed to be the total value, as shown by the books of the company, of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of:

(A) Reserves for accounts receivable, depreciation, depletion and any other valuation reserves with respect to specific assets;

(B) Taxes due and payable during the year for which such report was made;

(C) Good will, appreciation and abandoned property as set up in the annual report of the corporation when said annual report is accompanied by a certified balance sheet of the company; such balance sheet shall not be a part of the public records, but shall be a confidential report for use of the commissioner only. The commissioner shall then determine the base upon which the fee provided for in section 5733.06 of the Revised Code shall be computed as follows: divide into two equal parts the value as determined in this section of the issued and outstanding shares of stock of each corporation filing such report; take one part and multiply by a fraction whose numerator is the net book value of all the corporation's property owned or used by it in this state, and whose denominator is the net book value of all its property wherever situated, in each case eliminating any item of good will, appreciation and abandoned property; take the other part and multiply by a fraction whose numerator is the value of the business done by the corporation in this state during the year preceding the

date of the commencement of its current annual accounting period, and whose denominator is the total value of its business during said year wherever transacted.

In determining the value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, the commissioner shall be guided by the provisions of sections 5709.02 and 5709.03 of the Revised Code, except that investments in the capital stock of subsidiary corporations at least fifty-one per cent of whose common stock is owned by the reporting corporation shall be allocated in and out of state in accordance with the value of physical property in and out of the state representing such investments.

On the first Monday in June, annually, the commissioner shall certify to the auditor of state the amount determined by him by adding the two figures thus obtained for each corporation.

§ 5733.06 *Amount of state bank or investment company fee due; exemption of bankrupt corporations; statement; due date.*

On or before the fifteenth day of June, annually, the auditor of state shall charge for collection from each state chartered bank and each investment company as defined in division (J) of 5711.01 of the Revised Code, a fee of one-tenth of one per cent of the value certified and from each other corporation a fee of three-tenths of one per cent upon the value certified and shall immediately certify the same to the treasurer of state, provided that no fee shall be charged from any corporation which has been adjudicated a bankrupt, or for which a receiver has been appointed, or which has made a general assignment for the benefit of creditors, except for the portion of the then current year during which the tax commissioner finds such corporation had the power to exercise its cor-

porate franchise unimpaired by such proceedings or act. The minimum fee for all corporations shall be fifty dollars.

Upon receipt of the certificate of the auditor of state, the treasurer of state shall mail to each corporation at its principal office in the state, or to such person in the state as the corporation designates in its report, a statement showing the value or the proportionate value of the shares of stock upon which such fee is charged, and the amount of the fee. Such fee shall be payable to the treasurer of state on or before the fifteenth day of the following July. If such fee is not paid on or before that time a penalty shall attach thereto as provided in section 5733.12 of the Revised Code. No penalty shall attach prior to the expiration of thirty days from the date of the mailing of the statement by the treasurer of state.

* * * * *

§ 5733.12 *Allocation of taxes; penalty for failure to pay taxes:*

All franchise fees or taxes received by the treasurer of state under sections 5733.01 to 5733.27, inclusive, of the Revised Code, shall be credited to the general revenue fund.

If any corporation fails to pay on or before the dates, or within the time fixed by law, the fee charged against it, the treasurer of state shall certify the list of such delinquent corporations to the auditor of state, who shall add to the tax or fee due a penalty of fifteen percent. The auditor of state shall forthwith prepare proper duplicates and reports of such taxes, fees, and penalties and certify them to the attorney general for collection.

Thirty days after he receives such duplicates of delinquent taxes, fees, and penalties from the auditor of state, the attorney general shall certify to the tax commissioner a list of the corporations that have failed to pay such taxes, fees, and penalties.

APPENDIX E

I. Estimated Annual Financial Impact if State Franchise Taxes Are Applied to Production Credit Associations

State	Franchise Tax	PCAs in State	Est. Annual Franchise Tax
Alabama	Ala. Code, tit. 51, § 358	8	$5,495
Arkansas	Ark. Stat. Ann., § 84-1834	14	8,451
California	Cal. Tax Code, §§ 23183, 24405	23	13,441
Colorado	Col. Rev. Stat. Ann., §§ 31-36-6, 31-36-7	8	1,400
Connecticut	Conn. Gen. Stat. Ann., § 12-214	1	----------
Delaware	Del. Code Ann., tit. 8, § 361(8)	1	25
Florida	Fla. Stat. Ann., § 608.33	10	5,401
Georgia	Ga. Code Ann., §§ 92-2401, 92-2403	26	7,200
Illinois	Ill. Rev. Stat., c. 32, §§ 157.133, 157.134, 157.140, 157.140½	18	7,222
Iowa	Ia. Code Ann. § 469A.127	16	705
Kansas	Kan. Gen. Stat. Ann., § 17-702	14	3,225
Kentucky	Ky. Rev. Stat. § 136.070	10	3,169
Louisiana	La. Rev. Stat. § 47.601	8	11,291
Michigan	Mich. Stat. Ann., § 21.203	10	18,619
Minnesota	Minn. Stat. Ann., § 290.02	21	14,365
Mississippi	Miss. Code Ann., § 9313	10	10,102
Montana	Mont. Rev. Codes Ann., § 84-5801	11	1,877
Nebraska	Neb. Rev. Stat., §§ 21-303, 21-306	14	2,020
New Mexico	N. Mex. Stat. Ann., § 51-13-2	5	1,014
North Carolina	N.C. Gen. Stat., §§ 105-88, 105-122	26	72,266
Ohio	Ohio Rev. Code, § 5733.06	11	39,299
Oklahoma	Okla. Stat. Ann., tit. 68, § 644.5	14	4,308
Pennsylvania	Pa. Stat. Ann., tit. 72, § 1871	11	12,833
South Carolina	S.C. Code, §§ 65-621, 65-625	18	4,335
Texas	Tex. Rev. Civ. Stat., art. 12.01-12.22	36	125,741
Utah	Utah Code Ann., § 59-13-3	2	345
Vermont	Vt. Stat. Ann., tit. 32, § 5902	3	739
Virginia	Va. Code Ann., § 58-450	13	295
Washington	Wash. Rev. Code, § 82.04.220	6	462
West Virginia	W. Va. Code Ann., §§ 935(80), 935(1)(80a)	4	1,845
Wyoming	Wyo. Stat. Ann., § 17-40	1	200
Totals		373	377,690

II. States Whose Taxing Authorities Have Ruled That State Franchise Tax Is Not Applicable to Production Credit Associations After Government Stock Retired

State	Date of Opinion	Official Rendering Opinion
Alabama	May 10, 1954	J. A. Stephens, Ass't Comm'r, Dep't of Revenue.
Florida	January 12, 1960	Richard W. Ervin, Attorney General.
Georgia*	January 31, 1955	Eugene Cook, Attorney General.
Kentucky	May 28, 1958	Clayton Stewart, Supv., Income Audit Sec., Dep't of Revenue.
Louisiana	June 25, 1959	Frederick S. Haygood, Atty., Dep't of Revenue.
Mississippi	March 5, 1959	John E. Stone, Atty., State Tax Comm'n.
North Carolina	December 9, 1948	Harry McMullan, Attorney General.
South Carolina	November 25, 1947	Claude K. Wingate, Asst. Attorney General**.

*City of Athens imposes annual license tax of $300 on North Georgia Production Credit Association, on basis of February 8, 1962, opinion of City Attorney James Barrow.

**Opinion reaffirmed on March 4, 1957, by Attorney General T. C. Callison.

III. States Whose Taxing Authorities Have Ruled That Franchise Tax Is Applicable to Production Credit Associations After Government Stock Retired***

State	Date of Opinion	Official Rendering Opinion
California		[Tax assessed, action for refund pending in Superior Ct. for Sacramento County.]
Michigan	March 25, 1952	Gregory Frederick, Asst. Attorney General.
Minnesota	April 13, 1948	Commissioner of Taxation.
Montana	March 14, 1962	Corp. License Tax Div., State Board of Equalization.
Oklahoma	April 6, 1962	Oklahoma Tax Commission.
Utah		[Tax assessed, protest pending before State Tax Commission.]
Washington		[Tax assessed, petitions for refund pending before State Tax Commission.]

***Associations in Connecticut and Vermont voluntarily pay franchise taxes based on net income.

SOURCE: Farm Credit Administration, Washington, D.C., 1962.